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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,077	02/28/2001	Sandro Campestrini	CM 1903/MH	8480

27752 7590 08/22/2002

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	PAPER NUMBER
1751	11

DATE MAILED: 08/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-11

Office Action Summary	Application No.	Applicant(s)	
	09/786,077	CAMPESTRINI ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 August 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 4-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 4-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Claims 1 and 4-11 are pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/14/02 has been entered.

Objections/Rejections Withdrawn

2. The following objections/rejections as set forth in Paper #6 have been withdrawn:

None.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaiserman et al (US 5,338,474) or WO 98/03621 for the reasons of record set forth in Paper #4.

Additionally, Kaiserman et al teach that the system would be useful in normally basic aqueous solutions, in relatively neutral solutions and even in acidic solutions. See column 3, lines 45-55. '621 teaches that the compositions have a pH of from about 3 to about 13. See page 3, lines 1-10.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a bleaching composition having the specific pH containing a specific diacyl peroxide which provides stain removal and improved fabric color safety as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Kaiserman et al or '621 suggest such a bleaching composition having the specific pH containing a specific diacyl peroxide which provides stain removal and improved fabric color safety as recited by the instant claims.

Response to Arguments

With respect to Kaiserman, Applicant states that this disclosure is limited to a composition and does not teach a method of removing stains from fabric and improving color safety. Additionally, Applicant states that in order for a reference to be anticipatory upon a theory of inherency under an obviousness rejection, the limitation must necessarily flow from the teachings of a single reference. In response, note that, in relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows form the teachings of the applied art. Ex parte Levy, 17 USPQ 2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection, and the Examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. See MPEP 2112. In response, note that, the Examiner maintains that the bleaching compositions as taught and suggested

by Kaiserman et al would have the same stain removal and fabric color safety properties as recited by the instant claims because Kaiserman et al teach methods of bleaching fabrics using compositions containing the same components in the same proportions as recited by the instant claims. In fact, various examples disclosed by Kaiserman et al are drawn to cleaning fabrics as recited by the instant claims. Thus, the Examiner maintains that sufficient reasoning and/or evidence has been provided to support the position that the compositions of Kaiserman et al would provide fabric color safety and the burden is now shifted to the Applicant to show otherwise.

Also with respect to Kaiserman et al, Applicant states that though Kaiserman et al teach that the composition is useful in normal basic aqueous solutions, neutral solutions and even in acidic solutions, the Examiner's attention is drawn to the fact that Kaiserman et al cite only examples of compositions having a neutral or alkaline pH level ranging from 7-10. In response, note that, the teachings of a reference are not limited to the preferred embodiments, and clearly, the broad teachings of Kaiserman et al suggest acidic compositions having the pH as recited by the instant claims. The fact that Kaiserman et al does not include an example in the acidic pH range does not take away from the explicit suggestion of Kaiserman et al to formulate compositions as acidic solutions as taught by Kaiserman et al. See column 3, lines 45-60.

With respect to Ofosu-Asante, Applicant states that Ofosu requires the use of a microwave to remove stains from fabrics while Applicants do not require microwave energy to remove stains. Additionally, Applicant states that the claimed invention discloses a method of using an aliphatic-aromatic diacyl peroxide to deliver improved

fabric color safety while Ofosu is silent on a method of providing the benefit of fabric color safety. In response, note that the instant claims do not exclude the step of applying microwave energy to remove stains. Further, the Examiner maintains that the bleaching compositions as taught and suggested by '621 would have the same stain removal and fabric color safety properties as recited by the instant claims because '621 teaches methods of removing stains from fabrics using compositions containing the same components in the same proportions as recited by the instant claims. Note that, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by Applicant. In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972).

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GRD
August 20, 2002

GREGORY DELCOTTO
PRIMARY EXAMINER